

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

WASHINGTON
NEW YORK
SAN FRANCISCO
LONDON
BRUSSELS

MATTHEW DELNERO
TEL 202.662.5543
FAX 202.778.5543
MDELNERO@COV.COM

November 30, 2005

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Re: TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST
MB Docket No. 05-317**

**Lambert Broadcasting of Burlington, LLC
WVNY-DT, Burlington, Vermont
Facility ID # 11259**

Dear Ms. Dortch:

Pursuant to the instructions set forth in Public Notice DA 05-2979,¹ Lambert Broadcasting of Burlington, LLC ("Lambert"), licensee of WVNY(TV) and permittee of WVNY-DT, Burlington, Vermont ("the station" or "WVNY")² respectfully requests waiver of Section 339(a)(2)(D) of the Communications Act to prohibit testing of WVNY's digital signal coverage to decide whether a satellite system may deliver a distant digital signal to a viewer within the Grade B contour of WVNY's analog signal. Specifically, WVNY qualifies for a waiver under Section 339(a)(2)(D)(viii)(II) of the Act because "clear zoning [and] environmental legal impediments" have prevented the construction of the tower on which Lambert will locate its DTV facilities.³

¹ *TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be Filed by November 30, 2005 or February 15, 2007*, Public Notice, DA 05-2979 (rel. Nov. 17, 2005) ("*Waiver Notice*").

² WVNY is an affiliate of ABC in Burlington, Vermont, which is Nielsen DMA Market Rank # 90.

³ *See Waiver Notice* at 2.

In a process which began in March 1997 and was driven by the State of Vermont's restrictive environmental regulations, Lambert and four other Vermont broadcasters presented a joint tower proposal for their DTV facilities on a tower atop Mt. Mansfield, the highest peak in Vermont. In January 2003, the broadcasters reached a settlement agreement with the state and submitted an application for zoning approval. Finally, in April 2005 (after a delay of more than eight years) the Vermont District Five Environmental Commission issued a permit approving the construction of the proposed tower.

As previously documented to the Commission, environmental and zoning opposition caused this eight-year delay. On June 23, 2005, Lambert and the three other commercial television licensees submitted the attached request for a waiver of the July 1, 2005 replication and maximization deadline.⁴ In this waiver request, Lambert fully discussed the zoning and environmental approval process for the tower on Mt. Mansfield. Furthermore, the FCC licensees for WPTZ(TV) and WCAX-TV, which also propose to construct DTV facilities at the Mt. Mansfield site, have submitted five separate requests for extensions of time to construct their DTV facilities because of these zoning and environmental delays. The Commission has granted all five of these requests.⁵ In fact, the Commission declared that the tower siting delays experienced in Vermont "qualify as uncontrollable and unforeseeable delays that warrant extension of [the] DTV construction deadline[]." ⁶

Since receiving zoning approval, Lambert and the other FCC licensees proposing to construct at this site have proceeded expeditiously to complete construction of the DTV tower. The construction crews have poured the foundations for the tower and completed construction of the building at the site. Nevertheless, the extreme weather

⁴ See Letter from William R. Richardson, Jr., Counsel to Mt. Mansfield Television, Inc. et al. to Marlene H. Dortch, Secretary, FCC (filed June 23, 2005).

⁵ See *WPTZ-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20050406AAB (granted May 20, 2005); *WCAX-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20040218ALN (granted Mar. 15, 2005); *WCAX-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20030527ABQ (granted Oct. 24, 2003); *WCAX-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20020910ABE (granted Feb. 5, 2003); *WCAX-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20020227ADT (granted Mar. 28 2002).

⁶ *DTV Build-out, Requests for Extension of the Digital Television Construction Deadline*, 40 *Commercial Television Stations with May 1, 2002 Deadline*, 20 FCC Rcd. 5773 ¶¶ 9, 16 (2005).

conditions on Mt. Mansfield render construction virtually impossible between October 15 and June 1. Consequently, Lambert does not anticipate completing construction until the fall of 2006.

Based on the foregoing and pursuant to Section 339(a)(2)(D)(viii)(II), we respectfully request that the Commission grant WVNY a waiver of digital signal testing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew S. DelNero", with a long horizontal flourish extending to the right.

Matthew S. DelNero
*Counsel for Lambert Broadcasting of
Burlington, LLC*

cc: Nazifa Sawez (by hand delivery)

June 23, 2005

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Waiver of July 1, 2005 Replication and Maximization Deadline
MB Docket No. 03-15

Mt. Mansfield Television, Inc.
WCAX-DT, Burlington, VT
Facility ID # 46728

Lambert Broadcasting of Burlington, LLC
WVNY-DT, Burlington, VT
Facility ID # 11259

Hearst-Argyle Stations, Inc.
WPTZ-DT, North Pole, NY
Facility ID # 57476

Smith Media License Holdings, LLC
WFFF-DT, Burlington, VT
Facility ID # 10132

Dear Ms. Dortch:

Pursuant to the instructions set forth in Public Notice DA 05-1636, the above-referenced licensees respectfully request a waiver of the Commission's July 1, 2005, replication and maximization deadline, which applies to all top four network affiliates in the largest 100 markets.¹ These four licensees (along with Vermont ETV, Inc., the licensee of noncommercial

¹ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279 (2004), at ¶¶ 78, 83. We note that

educational station WETK in Burlington) have proposed co-locating their DTV facilities atop Mt. Mansfield, the highest peak in Vermont, on land owned by the University of Vermont. WCAX will be constructing a facility for use by all four of the stations requesting this waiver.

As the Commission is aware,² these four stations have experienced significant delays in completing construction of their digital facilities due to circumstances beyond their control. In WCAX's most recent construction permit extension application, for example, it noted the difficulties arising out of the State of Vermont's requirement that all DTV applicants (and other communications facility owners) present a single joint proposal designed to minimize the number of antennas and towers.³ At that time, WCAX outlined the numerous steps taken with the State of Vermont, the Governor's environmental advisors, and the University of Vermont to resolve these issues. In granting that application in March 2005, the Commission recognized that the circumstances met the requirements of Section 73.624(d)(3) of the Commission's rules.⁴ The Commission stated that "[c]onstruction and tower siting delays of the type outlined above qualify as uncontrollable and unforeseeable delays that warrant extension of these stations' DTV construction deadlines."⁵

WPTZ(TV) has previously filed a request to waive the Commission's replication and maximization deadline in conjunction with its April 7, 2005 construction permit extension request (File No. BEPCDT-20050406AAB). The Commission granted WPTZ(TV)'s construction permit extension and maximization request on May 20, 2005, for a term expiring on November 20, 2005. Nonetheless, as a member of the group of stations proposing co-location of their DTV facilities on Mt. Mansfield, WPTZ(TV) supports the instant waiver request and respectfully requests that any maximization deadline extension resulting from the instant request also apply to WPTZ(TV) to the extent that such extended deadline is after November 20, 2005. We also note that the maximization deadline for which WVNY-DT seeks a waiver is August 9, 2005, which is the date on which its construction permit (BPCDT-19991027ACA) expires.

² Letter from William R. Richardson, Jr., to Rick Chesson, February 24, 2005; Letter to Roy J. Stewart, October 2, 2001. *See also* File BEPCDT-20020227ADT, granted March 28, 2002; File No. BEPCDT-20020910ABE, granted February 5, 2003; File No. BEPCDT-20030527ABQ, granted October 24, 2003; BEPCDT-20050406AAB, granted May 20, 2005.

³ *See* File No. BEPCDT-20040218ALN (February 19, 2004).

⁴ 47 C.F.R. § 73.624(d)(3) (2005) (Extensions of time to complete construction of DTV facilities may be granted "upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee had taken all reasonable steps to resolve the problem expeditiously").

⁵ *See Order, DTV Buildout, Requests for Extension of the Digital Television Construction Deadline, Commercial Televisions with May 1, 2002 Deadline*, 2005 WL 597587, FCC 05-67, at ¶ 9, 16 (rel. March 15, 2005).

The problems faced by these stations in meeting the replication/maximization deadline are identical to those faced in meeting the construction deadline; upon construction of the joint facility, all stations will commence DTV operation at their fully authorized parameters. The stations have continued to work diligently to resolve the outstanding issues. The process of preparing and gaining approval of the joint proposal discussed above, which began in March 1997, concluded in late April 2005 with issuance by the Vermont District Five Environmental Commission of a so-called "Act 250 Permit." The appeal period for the permit has now passed and the permit is final. The project also has now received zoning and planning approval from the Town of Stowe.

Further, a prerequisite to the project's moving forward was completion of lease negotiations between WCAX and the University of Vermont, which owns the land on which the new DTV facilities will be located. Those negotiations, which commenced in December 2002, were protracted and difficult, but were concluded on May 5, 2005 with signing of the lease. WCAX is in the final stages of completing subleases with its television and radio subtenants.

Finally, the technical facilities for certain of the stations' DTV operations are contingent upon satisfactory resolution of Canadian coordination requirements. These stations have been diligently working with the Commission in seeking to obtain such coordination, while ensuring that the technical facilities continue to provide adequate service to Vermont viewers. We believe that this process is now complete or virtually complete.

As a result, the stations are now at the end of the pre-construction process. Tree clearing at the project site on Mt. Mansfield began the second week of May. Excavation for building and standby power fuel facility foundations has now begun. Material for the two tower foundations has been ordered, and the foundation work is scheduled to begin the second week of July. Because of the very short construction season on Mt. Mansfield (June 1 – October 15), the remote location of the site, and environmental permit constraints, the most that can be done this year is to complete the building and tower foundations, as well as construct the transmission line support structures. Construction of the building is scheduled to commence on June 1, 2006 and the towers are anticipated to be set in mid-July, to be followed by installation of the antennas and transmission lines. The building is scheduled for occupancy in early September, and installation and testing of transmitter equipment is scheduled to begin September 10, 2006. On-air testing is slated to begin November 21, 2006.

Based on the foregoing, the above-referenced Burlington-Plattsburgh market stations request a waiver of the July 1 replication and maximization deadline.

Respectfully submitted,

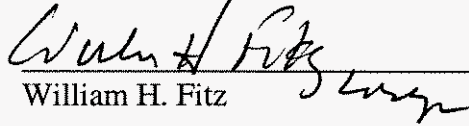


William R. Richardson, Jr.

WILMER CUTLER PICKERING HALE AND
DORR, LLP

2445 M Street, N.W.
Washington, D.C. 20037
202-663-6000

Counsel for Mt. Mansfield Television, Inc.



William H. Fitz

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
202-662-5120

Counsel for Lambert Broadcasting of Burlington,
LLC

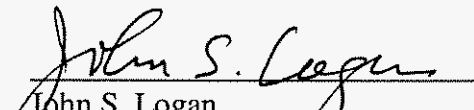



Mark J. Prak
Coe W. Ramsey

BROOKS PIERCE MCLENDON HUMPHREY &
LEONARD, LLP

P.O. Box 1800
Raleigh, NC 27602
919-839-0108

Counsel for Hearst-Argyle Stations, Inc.


John S. Logan
Scott S. Patrick 

DOW LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
202-776-2640

Counsel for Smith Media License Holdings, LLC

cc: Rick Chessen
Shaun Maher